

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Mark Anthony Hamilton,

Civ. No. 08-2500 (PAM/RLE)

Petitioner,

v.

MEMORANDUM AND ORDER

Warden Roehrich,

Respondent.

This matter is before the Court on Petitioner Mark Hamilton's Notice of Appeal, which the Clerk's Office construed as an Application for a Certificate of Appealability.¹ Petitioner seeks appellate review of this Court's decision of April 20, 2009, denying the Petition for a Writ of Habeas Corpus.

Petitioner is required to secure a Certificate of Appealability prior to appealing the dismissal of his habeas corpus action. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b)(1). This Court cannot grant a Certificate of Appealability unless the prisoner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). "Good faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate." Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994). Instead, the prisoner must satisfy a higher standard; he must show that the issues to be raised on appeal are "debatable among

¹ Petitioner also asks that forms be sent to him so that he can file for in forma pauperis ("IFP") status on appeal. Because Petitioner was granted IFP status to pursue his habeas petition, it is not necessary for him to re-file for such status on appeal.

reasonable jurists,” that different courts “could resolve the issues differently,” or that the issues otherwise “deserve further proceedings.” Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citing Lozado v. Deeds, 498 U.S. 430, 432 (1991) (*per curiam*)); Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997).

Petitioner did not set forth the grounds for his appeal in his notice of appeal. However, having reviewed the Petition and this Court’s Order, it is clear that Petitioner could not raise any ground for appeal that meet the strict standards set forth above. His Petition did not make any showing that his constitutional rights were denied, and the Court is convinced that no reasonable jurist would have resolved the issues in the Petition differently.

Accordingly, **IT IS HEREBY ORDERED** that Petitioner’s Application for Certificate of Appealability (Docket No. 22) is **DENIED**.

Dated: May 7, 2009

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge